

15-7250 MANRIQUE V. UNITED STATES

DECISION BELOW: 618 Fed.Appx. 579

LOWER COURT CASE NUMBER: 14-13029

QUESTION PRESENTED:

Fed. R. App. P. 4(b)(2) allows that "[a] notice of appeal filed after the court announces a decision, sentence or order - but before entry of the judgment - is treated as filed on the date of and after entry." The rule incorporates this Court's decision in *Lemke v. United States*, 346 U.S. 325 (1953) (per curiam) and decisions of the circuits that a premature notice of appeal matures or springs forward when the judgment under review is entered. The interaction of this rule with deferred restitution judgments has become a source of circuit conflict, particularly following this Court's decision in *Dolan v. United States*, 560 U.S. 605 (2010), which allows a sentencing court to retain jurisdiction after sentencing to award restitution under the Mandatory Victim Restitution Act, 18 U.S.C. § 3664(d)(5). At the time *Dolan* was decided, the Court acknowledged that "the interaction of [deferred] restitution orders with appellate time limits could have consequences", but it "le[ft] all such matters for another day." 560 U.S. at 618. The *Manrique* decision, below, exemplifies those consequences and highlights the significant circuit split that exists concerning the jurisdictional prerequisites for appealing a deferred restitution award.

This case mirrors a typical deferred restitution appeal. At *Manrique*'s sentencing hearing, the district judge pronounced terms of imprisonment and supervised release, and announced that "restitution is mandatory." The final judgment imposing sentence deferred entry of the precise restitution amount, stating it would be contained in an amended judgment. *Manrique* filed a notice of appeal. While the appeal of his sentence was pending, but before any briefing took place, a second final judgment was entered, identical in all respects to the first, except it detailed the specifics of restitution. Both parties thereafter briefed the appeal, including a challenge to the restitution award. Although the government posited no objection, the Court of Appeals ruled, *sua sponte*, that it did not have jurisdiction over the restitution award because *Manrique* did not file a second notice of appeal designating the amended judgment setting forth the restitution amount.

The Eleventh Circuit's decision below in *United States v. Manrique*, 618 F. App'x 579 (11th Cir. 2015), conflicts with the Court's decision in *Lemke*, the ripening clause of Rule 4(b)(2), and the jurisdictional determinations of the First, Second, Sixth and Ninth Circuits. Confusing that circuit split, two of the four circuits that acknowledge their jurisdiction over deferred restitution judgments have failed to give effect to the ripening clause of Rule 4(b)(2). Uncertain about the interaction of appellate rules, the First Circuit recommends, prospectively, that a second notice of appeal should be filed as to restitution awards, while the Ninth Circuit will dismiss such an appeal if the government simply objects to the timeliness of the premature notice.

Question presented: Should the Court grant certiorari to resolve the significant division among the circuits concerning the jurisdictional prerequisites for appealing a deferred restitution award made during the pendency of a timely appeal of a criminal judgment imposing sentence, a question left open by the Court's decision in *Dolan v. United States*, 560 U.S. 605, 618 (2010)?

CERT. GRANTED 4/25/2016